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SENATE BILL 568

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO HUMAN RIGHTS; MANDATING THAT THE HUMAN RIGHTS  
COMMISSION REPORT A SUBSTANTIATED COMPLAINT OF UNLAWFUL  
DISCRIMINATORY PRACTICE BY LAW ENFORCEMENT; PROVIDING FOR  
REFERRAL OF A COMPLAINT TO A DISTRICT ATTORNEY OR THE ATTORNEY  
GENERAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Human Rights Act is  
enacted to read:

"[NEW MATERIAL] EFFECT OF A FINDING OF UNLAWFUL  
DISCRIMINATORY PRACTICE IN THE CONTEXT OF LAW ENFORCEMENT  
TARGETING A PERSON.--

A. If the commission receives a complaint alleging  
law enforcement involvement in an unlawful discriminatory  
practice pursuant to Section 28-1-7 NMSA 1978, it shall

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1 exercise its full investigative and adjudicatory authority and,  
2 when necessary, shall also enlist the full investigative  
3 authority of the bureau.

4 B. If the commission substantiates a complaint of  
5 discriminatory practice in the context of law enforcement  
6 targeting a person, it shall notify the district attorney in  
7 the jurisdiction where the complaint originated of its findings  
8 and conclusions and shall share the results of its  
9 investigation.

10 C. If the district attorney in the jurisdiction  
11 where the complaint originated declines to investigate, the  
12 district attorney shall forward the commission's results and  
13 the district attorney's reasons for declining to the attorney  
14 general, who may bring an action."

15 Section 2. Section 28-1-2 NMSA 1978 (being Laws 1969,  
16 Chapter 196, Section 2, as amended) is amended to read:

17 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

18 A. "person" means one or more individuals, a  
19 partnership, association, organization, corporation, joint  
20 venture, legal representative, trustees, receivers or the state  
21 and all of its political subdivisions;

22 B. "employer" means any person employing four or  
23 more persons and any person acting for an employer;

24 C. "commission" means the human rights commission;

25 D. "director" or "bureau" means the human rights

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1 bureau of the labor relations division of the workforce  
2 solutions department;

3 E. "employee" means any person in the employ of an  
4 employer or an applicant for employment;

5 F. "labor organization" means any organization that  
6 exists for the purpose in whole or in part of collective  
7 bargaining or of dealing with employers concerning grievances,  
8 terms or conditions of employment or of other mutual aid or  
9 protection in connection with employment;

10 G. "employment agency" means any person regularly  
11 undertaking with or without compensation to procure  
12 opportunities to work or to procure, recruit or refer  
13 employees;

14 H. "public accommodation" means any establishment  
15 that provides or offers its services, facilities,  
16 accommodations or goods to the public, but does not include a  
17 bona fide private club or other place or establishment that is  
18 by its nature and use distinctly private;

19 I. "housing accommodation" means any building or  
20 portion of a building that is constructed or to be constructed,  
21 which is used or intended for use as the residence or sleeping  
22 place of any individual;

23 J. "real property" means lands, leaseholds or  
24 commercial or industrial buildings, whether constructed or to  
25 be constructed, offered for sale or rent, and any land rented

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1 or leased for the use, parking or storage of house trailers;

2 K. "secretary" means the secretary of workforce  
3 solutions;

4 L. "target" means to focus, amass or concentrate  
5 personnel, equipment or expertise;

6 [~~E.~~] M. "unlawful discriminatory practices" means  
7 those unlawful practices and acts specified in Section 28-1-7  
8 NMSA 1978;

9 [~~M.~~] N. "physical or mental handicap" means a  
10 physical or mental impairment that substantially limits one or  
11 more of a person's major life activities. A person is also  
12 considered to be physically or mentally handicapped if the  
13 person has a record of a physical or mental handicap or is  
14 regarded as having a physical or mental handicap;

15 [~~N.~~] O. "major life activities" means functions  
16 such as caring for one's self, performing manual tasks,  
17 walking, seeing, hearing, speaking, breathing, learning and  
18 working;

19 [~~Q.~~] P. "applicant for employment" means a person  
20 applying for a position as an employee;

21 [~~R.~~] Q. "sexual orientation" means heterosexuality,  
22 homosexuality or bisexuality, whether actual or perceived; and

23 [~~S.~~] R. "gender identity" means a person's  
24 self-perception, or perception of that person by another, of  
25 the person's identity as a male or female based upon the

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1 person's appearance, behavior or physical characteristics that  
2 are in accord with or opposed to the person's physical anatomy,  
3 chromosomal sex or sex at birth."

4 Section 3. Section 28-1-4 NMSA 1978 (being Laws 1987,  
5 Chapter 342, Section 18) is amended to read:

6 "28-1-4. POWERS AND DUTIES.--

7 A. The commission may:

8 (1) hear complaints and issue orders,  
9 including cease and desist orders concerning alleged unlawful  
10 discriminatory practice; and

11 (2) hold hearings, subpoena witnesses and  
12 compel their attendance, administer oaths, take the testimony  
13 of any person under oath, order depositions and require the  
14 production for examination of any books, records,  
15 correspondence, documents and other evidence relating to any  
16 matter under investigation or in question before the  
17 commission. Contumacy or refusal to obey a subpoena issued  
18 pursuant to this section constitutes contempt punishable by the  
19 district court of the judicial district in which the witness  
20 may be found. No individual shall be excused from attending  
21 and testifying or from producing evidence in obedience to a  
22 subpoena issued pursuant to this section on the grounds that  
23 the testimony or evidence required of ~~[him]~~ the individual may  
24 tend to incriminate ~~[him]~~ or subject ~~[him]~~ that individual to a  
25 penalty or a forfeiture. However, no individual shall be

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1 prosecuted or subjected to any penalty or forfeiture concerning  
2 any matter for which ~~[he]~~ the individual is compelled to  
3 testify or give evidence after having claimed ~~[his]~~ the right  
4 against self-incrimination. Nevertheless, the individual so  
5 testifying shall not be exempt from prosecution and punishment  
6 for perjury committed while testifying.

7 B. The ~~[division]~~ bureau may:

8 (1) receive and investigate complaints of  
9 alleged unlawful discriminatory practice;

10 (2) seek to eliminate discrimination through  
11 conciliation and persuasion by voluntary conferences with  
12 interested parties;

13 (3) recommend application by the director to a  
14 district court in the county where the violating party resides  
15 for specific performance of any conciliation agreement or for  
16 enforcement of any order issued by the commission;

17 (4) endeavor to eliminate prejudice and to  
18 further good will. The ~~[division]~~ bureau, in cooperation with  
19 the ~~[state department of]~~ public education department and local  
20 boards of education, shall encourage an educational program for  
21 all residents of the state, calculated to eliminate prejudice,  
22 its harmful effects and its incompatibility with principles of  
23 fair play, equality and justice;

24 (5) encourage voluntary advisory groups to  
25 study problems of discrimination in all fields, to foster,

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1 through community efforts, good will and cooperation in this  
2 state and to make recommendations to the secretary for the  
3 development of policies and procedures [~~which~~] that the  
4 secretary may recommend to appropriate state agencies;

5 (6) seek and enlist the cooperation and  
6 contributions and grants of individuals and foundations,  
7 private, charitable, religious, labor, civic and benevolent  
8 organizations and the federal government for the purposes of  
9 this section;

10 (7) issue publications and release the results  
11 of investigation and research [~~which~~] that in the secretary's  
12 judgment will tend to promote good will and prevent or  
13 eliminate discrimination; and

14 (8) submit annually a written report of all  
15 its activities and recommendations to the secretary, the  
16 governor and the legislature."

17 Section 4. Section 28-1-7 NMSA 1978 (being Laws 1969,  
18 Chapter 196, Section 7, as amended) is amended to read:

19 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an  
20 unlawful discriminatory practice for:

21 A. an employer, unless based on a bona fide  
22 occupational qualification or other statutory prohibition, to  
23 refuse to hire, to discharge, to promote or demote or to  
24 discriminate in matters of compensation, terms, conditions or  
25 privileges of employment against any person otherwise qualified

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1 because of race, age, religion, color, national origin,  
2 ancestry, sex, physical or mental handicap or serious medical  
3 condition, or, if the employer has fifty or more employees,  
4 spousal affiliation; provided, however, that 29 U.S.C. Section  
5 631(c)(1) and (2) shall apply to discrimination based on age;  
6 or, if the employer has fifteen or more employees, to  
7 discriminate against an employee based upon the employee's  
8 sexual orientation or gender identity;

9 B. a labor organization to exclude a person or to  
10 expel or otherwise discriminate against any of its members or  
11 against any employer or employee because of race, religion,  
12 color, national origin, ancestry, sex, sexual orientation,  
13 gender identity, spousal affiliation, physical or mental  
14 handicap or serious medical condition;

15 C. any employer, labor organization or joint  
16 apprenticeship committee to refuse to admit or employ any  
17 person in any program established to provide an apprenticeship  
18 or other training or retraining because of race, religion,  
19 color, national origin, ancestry, sex, sexual orientation,  
20 gender identity, physical or mental handicap or serious medical  
21 condition, or, if the employer has fifty or more employees,  
22 spousal affiliation;

23 D. any person, employer, employment agency or labor  
24 organization to print or circulate or cause to be printed or  
25 circulated any statement, advertisement or publication, to use

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1 any form of application for employment or membership or to make  
2 any inquiry regarding prospective membership or employment that  
3 expresses, directly or indirectly, any limitation,  
4 specification or discrimination as to race, color, religion,  
5 national origin, ancestry, sex, sexual orientation, gender  
6 identity, physical or mental handicap or serious medical  
7 condition, or, if the employer has fifty or more employees,  
8 spousal affiliation, unless based on a bona fide occupational  
9 qualification;

10 E. an employment agency to refuse to list and  
11 properly classify for employment or refer a person for  
12 employment in a known available job, for which the person is  
13 otherwise qualified, because of race, religion, color, national  
14 origin, ancestry, sex, sexual orientation, gender identity,  
15 spousal affiliation, physical or mental handicap or serious  
16 medical condition, unless based on a bona fide occupational  
17 qualification, or to comply with a request from an employer for  
18 referral of applicants for employment if the request indicates  
19 either directly or indirectly that the employer discriminates  
20 in employment on the basis of race, religion, color, national  
21 origin, ancestry, sex, sexual orientation, gender identity,  
22 spousal affiliation, physical or mental handicap or serious  
23 medical condition, unless based on a bona fide occupational  
24 qualification;

25 F. any person in any public accommodation to make a

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1 distinction, directly or indirectly, in offering or refusing to  
2 offer its services, facilities, accommodations or goods to any  
3 person because of race, religion, color, national origin,  
4 ancestry, sex, sexual orientation, gender identity, spousal  
5 affiliation or physical or mental handicap, provided that the  
6 physical or mental handicap is unrelated to a person's ability  
7 to acquire or rent and maintain particular real property or  
8 housing accommodation;

9 G. a state law enforcement agency or private law  
10 enforcement agency or a law enforcement officer at the local,  
11 county, regional or state level to target a person for law  
12 enforcement based on legal exercise of speech or assembly,  
13 race, ethnicity, religion, physical or mental handicap, sexual  
14 orientation or gender identity;

15 [~~G.~~] H. any person to:

16 (1) refuse to sell, rent, assign, lease or  
17 sublease or offer for sale, rental, lease, assignment or  
18 sublease any housing accommodation or real property to any  
19 person or to refuse to negotiate for the sale, rental, lease,  
20 assignment or sublease of any housing accommodation or real  
21 property to any person because of race, religion, color,  
22 national origin, ancestry, sex, sexual orientation, gender  
23 identity, spousal affiliation or physical or mental handicap,  
24 provided that the physical or mental handicap is unrelated to a  
25 person's ability to acquire or rent and maintain particular

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1 real property or housing accommodation;

2 (2) discriminate against any person in the  
3 terms, conditions or privileges of the sale, rental,  
4 assignment, lease or sublease of any housing accommodation or  
5 real property or in the provision of facilities or services in  
6 connection therewith because of race, religion, color, national  
7 origin, ancestry, sex, sexual orientation, gender identity,  
8 spousal affiliation or physical or mental handicap, provided  
9 that the physical or mental handicap is unrelated to a person's  
10 ability to acquire or rent and maintain particular real  
11 property or housing accommodation; or

12 (3) print, circulate, display or mail or cause  
13 to be printed, circulated, displayed or mailed any statement,  
14 advertisement, publication or sign or use any form of  
15 application for the purchase, rental, lease, assignment or  
16 sublease of any housing accommodation or real property or to  
17 make any record or inquiry regarding the prospective purchase,  
18 rental, lease, assignment or sublease of any housing  
19 accommodation or real property that expresses any preference,  
20 limitation or discrimination as to race, religion, color,  
21 national origin, ancestry, sex, sexual orientation, gender  
22 identity, spousal affiliation or physical or mental handicap,  
23 provided that the physical or mental handicap is unrelated to a  
24 person's ability to acquire or rent and maintain particular  
25 real property or housing accommodation;

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1           [~~H.~~] I. any person to whom application is made  
2 either for financial assistance for the acquisition,  
3 construction, rehabilitation, repair or maintenance of any  
4 housing accommodation or real property or for any type of  
5 consumer credit, including financial assistance for the  
6 acquisition of any consumer good as defined by Section 55-9-102  
7 NMSA 1978, to:

8                   (1) consider the race, religion, color,  
9 national origin, ancestry, sex, sexual orientation, gender  
10 identity, spousal affiliation or physical or mental handicap of  
11 any individual in the granting, withholding, extending,  
12 modifying or renewing or in the fixing of the rates, terms,  
13 conditions or provisions of any financial assistance or in the  
14 extension of services in connection with the request for  
15 financial assistance; or

16                   (2) use any form of application for financial  
17 assistance or to make any record or inquiry in connection with  
18 applications for financial assistance that expresses, directly  
19 or indirectly, any limitation, specification or discrimination  
20 as to race, religion, color, national origin, ancestry, sex,  
21 sexual orientation, gender identity, spousal affiliation or  
22 physical or mental handicap;

23           [~~H.~~] J. any person or employer to:

24                   (1) aid, abet, incite, compel or coerce the  
25 doing of any unlawful discriminatory practice or to attempt to do

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1 so;

2 (2) engage in any form of threats, reprisal or  
3 discrimination against any person who has opposed any unlawful  
4 discriminatory practice or has filed a complaint, testified or  
5 participated in any proceeding under the Human Rights Act; or

6 (3) willfully obstruct or prevent any person  
7 from complying with the provisions of the Human Rights Act or to  
8 resist, prevent, impede or interfere with the commission or any  
9 of its members, staff or representatives in the performance of  
10 their duties under the Human Rights Act; or

11 [~~J~~] K. any employer to refuse or fail to accommodate  
12 a person's physical or mental handicap or serious medical  
13 condition, unless such accommodation is unreasonable or an undue  
14 hardship."

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